

REMARKS

A. Claims 1, 2, 25, and 26 Are Novel over Coleman

The Office rejects claims 1, 2, 25, and 26 as allegedly anticipated by Coleman. Without acquiescing to the propriety of the rejection and to expedite allowance, Applicant has amended independent claim 1 to recite that the non-radio opaque securing material is **separate from** the two or more cross strands and has amended independent claims 25 and 26 to recite that the non-radio opaque securing material is **separate from** each of the at least two strands.

Coleman discloses using the suture strands themselves to create knots at each intersection. *See* 3:12-19; 4:25-26; 4:38-39. The Office at least has not established that Coleman discloses or suggests the subject matter of claim 1, “where the non-radio opaque securing material is separate from the two or more cross strands,” or the subject matter of either claim 25 or claim 26, “where the non-radio opaque securing material is separate from the at least two strands.”

For at least these reasons, claims 1, 2, 25, and 26 are novel over Coleman, and the rejection should be withdrawn.

B. Claims 1, 2, 25, and 26 Are Patentable over Coleman and Nydegger

The Office rejects claims 1, 2, 25, and 26 as allegedly obvious over Coleman in view of US 1,947,166 (Nydegger). Applicant respectfully traverses.

As explained above, the Office at least has not established that Coleman discloses or suggests the subject matter of claim 1, “where the non-radio opaque securing material is separate from the two or more cross strands,” or the subject matter of either claim 25 or claim 26, “where the non-radio opaque securing material is separate from the at least two strands.” The Office has not established that Nydegger cures Coleman’s deficiency.

Coleman states that anchors 12—which “may be an adhesive droplet, a thermal weld, or they may be in the form of a knot tied during a weaving process of manufacture”—function to do two things: “prevent separation of the members 11 so that they remain in contiguous contact” and “prevent longitudinal slippage along a member to a different position.” See 3:13-19.

Nowhere does Coleman teach or suggest that the disclosed anchors are insufficient to achieve these two functions. As a result, the Office at least has not established a *prima facie* case of obviousness with respect to the proposed combination because it has failed to identify any deficiency in Coleman that Nydegger’s textile loops 42 “will improve,” or why any theoretical improvement would be achieved. See *Ex parte Mitchell*, Appeal No. 2010-003793, slip op. at 4 (BPAI July 1, 2011) (non-binding) (reversing obviousness rejection, and finding Examiner had provided “no articulated reasoning” for proposed combination where reference had “already solved” the problem attributed to it by the Examiner); *Ex parte Rinkevich*, Appeal No. 2007-1317, slip op. at 8-9 (BPAI May 29, 2007) (non-binding) (noting that “the problem proffered by the Examiner is already solved” by the primary reference, and explaining that “a person of ordinary skill in the art having common sense at the time of the invention would not have reasonably looked at [a secondary reference] to solve a problem already solved by [the primary reference].”).

Furthermore, the Office has at least not established a *prima facie* case of obviousness with respect to the proposed combination because it has not established that using Nydegger’s textile loops 42 in place of the anchors 12 of Coleman would serve the two functions set forth above. See *Ex parte Farbrot*, Appeal No. 2008-4799, slip op. at 12-14 (BPAI Feb. 24, 2009) (non-binding) (reversing an obviousness rejection premised on the replacement of the primary

reference's lotion with the gel of a secondary reference because doing so "would eliminate a critical function" of the primary reference's product).

For at least these reasons, claims 1, 2, 25, and 26 are patentable over the Office's proposed combination, and the rejection should be withdrawn.

C. Claims 12 and 14 Are Patentable over Coleman and The Ashley Book of Knots

The Office rejects claims 12 and 14 as allegedly obvious over Coleman (and in view of Nydegger), and further in view of The Ashley Book of Knots. Without acquiescing to the propriety of the rejection and to expedite allowance, Applicant has amended independent claim 12 to recite that the non-radio opaque securing material is separate from the two or more cross strands, which the Office at least has not established that Coleman discloses or suggests. Furthermore, for at least the reasons give above, the Office has not established that Nydegger cures Coleman's deficiency. For substantially the same reasons, the Office has not established that The Ashley Book of Knots cures Coleman's deficiency (or Coleman's and Nydegger's deficiencies) either.

For at least these reasons, claims 12 and 14 are patentable over the Office's proposed combination, and the rejection should be withdrawn.

D. Conclusion

Claims 1, 2, 12, 14, 25 and 26 are in condition for allowance. Should Examiner Erez have any questions, comments, or suggestions relating to this application, he is invited to contact Applicant's attorney at (512) 536-3031.

Respectfully submitted,

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